HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 20600 OF 2006

Between:

Garapati Venkateswara Rao

..... Petitioner

AND

The Commissioner,
Greater Visakhapatnam Municipal Corporation,
Visakhapatnam & others

.....Respondents

:: O R D E R ::

Counsel for the petitioner : Shri Balaji Medamalli

Counsel for respondent Nos.1 and 2 : Shri N. Ranga Reddy

Counsel for respondent No.3 : Shri N. Satyanarayana

Dated: 10.11.2006

Per G.S.SINGHVI, CJ

For many centuries, the Indian society had cherished two basic values of life, namely, 'Satya' and 'Ahimsa'. One of these values i.e., 'Satya' constituted an integral part of the judicial system at various levels in our country. In pre-independence era, the people used to feel proud to tell truth in the Court proceedings irrespective of the consequences. However, post-independence period has seen a dramatic devaluation of the ethics. The materialism has over-shadowed the old ethos and quest for personal gain is so immense that the people do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in court proceedings. In a substantial number of cases, the litigants resort to falsehood. A new creed of litigants has developed in the last 40 years, who do not have any respect for truth. They can go to any length to make false statements, misleading statements and suppress facts and documents with a view to persuade the Court to pass favourable orders. In order to meet this challenge, the Courts have evolved and will continue to evolve new mechanism to show doors to the litigants who do not come with clean hands. One of the rules laid down by the courts is that a litigant who touches the pure fountain of justice with tainted hands is not entitled to hearing on the merits of the case. If any judicial pronouncement is required to support this proposition, reference can appropriately be made to the judgments of the Supreme Court in **Hari Narain v. Badri Das**[1], **Welcome Hotel and others v. State of Andhra Pradesh and others**

etc.[2]**, G.Narayanaswamy Reddy and others v. Governor of Karnataka and another**[3]**, S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others**[4] and recent judgment dated March 22, 2006 pronounced in Writ Appeal No.147 of 2006 – **Kasinath Rao Godse v. Municipal Council, Sangareddy.**

We have made a mention of the aforementioned proposition because after perusing the record of the case and hearing learned counsel for the parties, we are convinced that the petitioner has not approached the Court with clean hands and is, therefore, not entitled to relief in terms of the prayer made in the writ petition.

In the affidavit filed by him, the petitioner has averred as under:

i) that he is the owner of property bearing No.58-15-114/1 measuring 116.66 square yards situated at Santhi Nagar, NDA Kotha Road, Visakhapatnam;

ii) that respondent No.3 is a builder and is engaged in construction of multistoreyed building;

iii) that the construction being raised by respondent No.3 on the southern side of property bearing Door No.58-15-114/1 has not been sanctioned by Greaer Visakhapatnam Municipal Corporation (for short, 'the Corporation');

iv) that he i.e., the petitioner filed suit (O.S.No.1378 of

2006) in the Court of Principal Junior Civil Judge, Visakhapatnam against the illegal encroachment of his land by respondent No.3;

v) that the authorities of the Corporation are hand in glove with the third respondent and they have falsely represented that the illegal construction raised by the latter has been demolished, and

vi) that the representations made by him for removal of the illegal construction being made by respondent No.3 have not been attended to by the concerned authority of the Corporation.

In the counter affidavit filed by Sri N.Srikanth , Commissioner of the Corporation, it has been averred that respondent No.3 has raised construction in violation of the sanctioned plan and that action taken by the Corporation for demolition of illegal construction has been frustrated on account of the injunction order passed by the civil Court in O.S.No.1815 of 2006 instituted by respondent No.3. For the sake of reference, paragraph 3 of the affidavit of Sri N.Srikanth is reproduced below:

> "3. The averments made in this para are not true. However, the petitioner is put to strict proof of the same by way of documentary evidence. In reply to the averments made in this para, the respondent Corporation submits that it is a fact that the respondent Corporation granted permission in favour of one Rankin for the construction of individual residential building consisting of ground + 2 upper floors vide proceedings in B.A.No.11282/05/ ACP-III, dt.26-11-2005 subject to observance of certain conditions as laid down in the proceedings. The respondent

Corporation further submits that while executing the work the 3rd respondent who is a builder deviated the sanctioned plan granted by the respondent Corporation in respect of Balcony projections, coverage and FSI, which are not at all allowable as per the provisions of G.O.Ms.No.423, MA, dt.31-7-1998. The deviations made by the third respondent are as follows:

S.No.	Description	As per plan in Mtrs.	As on ground in Mtrs.	Deviation in Mtrs.
01	Front set back	3.00	2.00	1.00
02	Rear set back	3.00	2.00	1.00
03	Side set back	1.50	0.50	1.00
04	Side set back	1.95	0.90	1.05
05	Coverage	50%	75%	25%
06	F.S.I.	1:1.48	1:2.99	1:1:51
07	Usage	Residential	Residential	---
08	Height of building	10	13.5	3.50
09	No. of floors	GF+FF+SF	GF+FF+SF+TF	Ground+2 upper floors and third floor

The table referred to above clearly shows the extent of deviation made by the third respondent contrary to the sanctioned plan. During out-door inspection, the officials of the respondent Corporation detected the above deviations and stopped the work and instructed the third respondent to remove the deviated portions. In the meanwhile, the petitioner made a complaint against the

construction under reference on 27-7-2006 under Right of Information Act. A notice under Section 452 of HMC Act, 1955 was issued in U.C.No.3/06, dt.1-8-2006 calling upon the third respondent to show cause as to why action shall not be taken against the unauthorised deviations and constructions. But the third respondent failed to comply with the notice. Since the third respondent failed to comply with the notice, the officials partly demolished the deviated portions on 5-8-2006. I further submit that I have personally inspected the premises under reference on 6-8-2006. Since the deviations were partly removed, I have instructed the second respondent to issue a Memo to the concerned Assistant City Planner for not removing the deviated portions totally. Accordingly, a Memo was also issued to the concerned officials on 6-8-2006 itself calling upon to show cause as to why disciplinary action shall not be taken. A copy of the Memo filed herewith for kind perusal of the Hon'ble Court. Accordingly, an endorsement was also issued to the petitioner. Photographs showing the demolition process are enclosed for kind perusal of the Hon'ble High Court. The first respondent further submits that after demolishing the deviated portions, the third respondent approached the court of law, filed a civil suit in O.S.No.1815/2006 and obtained interim orders in I.A.No.1577/2006 against the respondent Corporation on 7-8-2006 by suppressing the material facts. The first respondent does not admit the remaining averments made in the affidavit. The table mentioned supra clearly shows the extent of deviation made by the third respondent contrary to the sanctioned plan."

In the counter affidavit filed today in the Court, Sri V.Srinivasa Rao, representative of respondent No.3, has come out with an altogether new story. He has averred that the petitioner's property is situated on the

northern side of the land purchased by her wife, Smt.Nagalakshmi through sale-cum-GPA, dated 27-7-2005. He has further averred that the petitioner has constructed a small A.C. sheet shed, wherein he is running an office being a civil contractor engaged in National Highway works. Sri V.Srinivasa Rao has denied the allegation of encroachment and alleged that the petitioner has encroached 28.88 square yards belonging to his wife. For the sake of reference, paragraphs 2, 3, 5 and 6 of the affidavit of Sri V.Srinivasa Rao are reproduced below:

> "2. I humbly submit that most of the allegations made in the affidavit of the petitioner are not true and correct. It is a fact that the petitioner is having his site in small extent of 116 sq.yards on the northern side to my wife's property namely Smt.V.Nagalakshmi who has obtained agreement to sell-cum-GPA, dated 27-7-2005 from Kamakula Rankin, the original owner of Plot No.74 in an extent of 400 sq.yards with measurements of 45 width and 80 feet long in Shantinagar NAD Employees Co-operative Layout which is a VUDA approved layout in 1973. In the said layout, out of 100 plots, 98 plots are of same measurements of extent of 400 sq.yards and only two plots are big plots of above 500 sq.yards. The petitioner has no house in his site except a small AC sheet shed wherein he is running his office room as he is a civil contractor for National Highway works. In fact, the building plan was obtained by our vendor K.Rankin even before our purchasing the said property by my wife under the agreement. Myself or my wife have not encroached any property in an extent of 30 sq.yards as pleaded by him in O.S.No.1378/2006 on the file of Principal Junior Civil Judge, Visakhapatnam. In fact, the petitioner has encroached an extent of 28.88 sq.yards belonging to my wife.

3. I further humbly submit that my wife purchased 300 sq. yards of site which is situated on the southern side of the petitioner property under the agreement of sale-cum-GPA and she has been constructing the house in her property as per the permission obtained by her vendor Rankin from the Municipal Corporation, Visakhapatnam. The petitioner did not raise any dispute till the major portion of the construction is completed and at the fag-end of the construction he started disputes. In the civil suit he has filed I.A.no.1526 of 2006 for appointment of an Advocate Commissioner for localization of the disputed property of 30 sq.yards. Though Advocate Commissioner was appointed to measure the properties of both the parties with reference to the title deeds of both the parties with the help of Municipal Surveyor and the same is awaited.

5. I further humbly submit that in fact our vendor K.Rankin has filed a civil suit in O.S.No.1815 of 2006 and obtained interim order of status quo in I.A.No.1577 of 2006 from the file of the Principal Junior Civil Judge, Visakhapatnam, the 1st respondent herein, when an attempt was made to demolish the building without issuing any show cause notice under Section 452 of H.M.C.Act and conducting any enquiry in that regard. The encroachment made by the petitioner in our plot to an extent of 28.88 sq.yards is clearly shown in dotted lines in the sketch filed along with the suit O.S.No.1815 of 2006. The petitioner, ignoring the disputed property, is claiming that the side set back is not left as per the approved plan. In fact, the side set back has to be left is 2 meters. But, including the disputed property, we have left 3 meters as side set back in between our property and the property of the petitioner.

6. I further humbly submit that on my enquiry it is learnt that the petitioner demanded our vendor Sri K.Rankin who is very old man of 82 years to sell his plot to

the petitioner for throw away price for which he has not agreed to do so and he has sold the property under the agreement of sale to my wife for real market value. Hence, the petitioner bore grudge against us and started causing this harassment with incorrect allegations after construction of the building is completed to a major extent. The writ petition is filed by suppressing all these facts. In fact, our vendor, K.Rankin being vexed with the attitude of the petitioner in bringing the Municipal authorities for demolition of the house as the regular sale deed was not yet executed and as the building plan was also obtained in his name he has filed the civil suit O.S.No.1815 of 2006 in his name being interested person in the subject matter to protect his interest and also our interest being agreement holder."

Sri Balaji Medamalli argued that his client cannot be accused of not coming to the Court with clean hands because he has disclosed the factum of filing civil suit. Learned counsel emphasized that his client has filed suit in the Court of Principal Junior Civil Judge, Visakhapatnam only qua the encroachment made by respondent No.3 and not against the illegal construction made by the said respondent. He then argued that the construction made by respondent No.3 is in clear violation of the sanctioned building plan and, therefore, the authorities of the Corporation are duty-bound to demolish the same.

Learned counsel for the Corporation, on the instructions of Sri N.Srikanth, who is present in person, says that the authorities concerned have already initiated action for demolition of the illegal construction raised by respondent No.3, but actual demolition could not be done because of the order of injunction passed by the Principal Junior Civil Judge, Visakhapatnam. He

submitted that the Commissioner had directed the Assistant City Planner to remove the illegal constructions made by respondent No.3, but the latter derelicted in the performance of his duty and facilitated obtaining of injunction by respondent No.3.

Learned counsel for respondent No.3 emphasised that his client has not raised any construction in violation of the sanctioned plan and the same cannot be demolished in view of the order of injunction passed by the court of competent jurisdiction.

We have considered the respective submissions. A careful reading of the averments contained in the affidavit of the petitioner and the plaint filed by him in the Court of Principal Junior Civil Judge, Visakhapatnam (copy of the plaint was made available by the learned counsel representing the Corporation) shows that the petitioner has given an impression that despite representations made by him, the authorities of the Corporation have not taken steps to remove the illegal construction raised by respondent No.3. However, he omitted to place on record copy of the plaint filed by him. This appears to have been done by the petitioner to keep the Court in dark about the similar nature of relief claimed by him in O.S.No.1378 of 2006. Respondent No.3 too does not appear to be on a better pedestal than the petitioner. He has admitted raising construction in violation of the sanctioned building plan, but has obtained an order of status quo from the Court of Principal Junior Civil Judge, Visakhapatnam.

In view of the above, we do not find any justification to entertain the prayer made by the petitioner and relegate the parties to pursue the suits filed by them in the court at Visakhapatnam.

With the above observations, the writ petition is dismissed leaving it open to the authorities of the Corporation to take appropriate legal action in the matter of illegal construction, if any raised by respondent No.3. It will be within the domain of the Corporation to file application in the civil Court for vacating the ad interim order passed in favour of respondent No.3, but also for taking action against the said respondent, who appears to have raised construction in total disregard of the conditional order of injunction passed by the Trial Judge that no further construction shall be made in violation of the approved plan.

As a sequel to dismissal of the writ petition, W.P.M.P.No.26049 of 2006 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

10.11.2006

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[1] AIR 1963 SC 1558

[2] AIR 1983 SC 1015

[3] AIR 1991 SC 1726

[4] JT 1993 (6) SC 331